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BEFORE THE IDAHO PERSONNEL COMMISSION

BONNIE WEBSTER,	)	
	)	
Appellant,	)	IPC No. 96-14
v.	)	
	)	
DEPARTMENT OF HEALTH AND	)	DECISION AND ORDER ON
WELFARE,	)	PETITION FOR REVIEW
	)	
Respondent.	)	
	)	

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On petition for review from the decision of the Hearing Officer, Uranga, Jean R., presiding. Petitioner Bonnie Webster appeared through her counsel of record, Danny Radakovich, Lewiston, Idaho. Respondent Idaho Department of Health and Welfare (DHW) appeared through its counsel of record, Marcy J. Spilker, Deputy Attorney General, Human Services Division, Lewiston, Idaho.

Webster petitions for review from the Hearing Officer's decision upholding DHW's dismissal of Webster from the classified service. The Hearing Officer found that DHW established by a preponderance of the evidence that: (1) Webster had refused to admit a patient (R.S.) to State Hospital North, Unit 3, after having been ordered to do so by Dr. Jon Webb, Clinical Director of the hospital; and (2) Webster's actions in organizing and writing a letter of protest without confronting Dr. Webb violated well-established policies governing the challenge

of a doctor's orders. Accordingly, the hearing officer ruled that Webster was properly dismissed pursuant to IDAPA 28.01.01.190.01.d and 190.01.e. We AFFIRM.

## **I.**

### **BACKGROUND**

This is a disciplinary dismissal case under Rule 190 of the Idaho Personnel Commission Rules. DHW dismissed Webster from classified employment as a nurse at State Hospital North in Orofino pursuant to IDAPA 28.01.01.190.01.d and 190.01.e. Specifically, this case arises from events which occurred on July 16, 1996.

The record reflects, and the parties appear to be in substantial agreement, that on July 16, 1996, at approximately 2:15 p.m., patient R.S. arrived at State Hospital North. The patient was pre-approved for admission to the Dual Diagnosis Program. The Dual Diagnosis program was developed to treat patients who had both chemical dependency and psychiatric problems. When R.S. arrived, he was visibly intoxicated and his parents advised that he had consumed a six-pack of beer on the trip between Boise and Orofino. Tommy Atkinson, Admissions Coordinator, consulted with Dr. Webb, who directed that R.S. be admitted to Unit 3, the psychiatric treatment unit. Atkinson then contacted Webster who was Acting Charge Nurse for Unit 3. Webster advised Atkinson that R.S. could not be admitted to Unit 3 because he had been drinking and the nurses were not trained to handle acute detoxification. Atkinson consulted with Dr. Webb again and was again advised to admit R. C. to Unit 3. Atkinson passed this information to Sue Dodge who, like Webster, questioned Dr. Webb's order. Atkinson consulted with Dr. Webb a third time and was again advised to admit R. S. to Unit 3. Atkinson relayed this information to Webster. When Webster did nothing to begin the admissions process, Atkinson began the admissions process.

In between Atkinson's meetings with Dr. Webb concerning R. S., Mr. Gerald Hart, Hospital Administrator, encountered a number of agitated employees in Unit 3, including Webster, who advised him of the dispute. Mr. Hart discussed the situation with Atkinson and returned to advise Webster to admit the patient. Still Webster took no action to admit R. S. At the instigation of Webster, the Unit 3 staff decided that they should express their concerns about handling an intoxicated patient by writing a letter. Ms. Webster prepared a letter (Exhibit 4) which was signed by the Unit 3 personnel and then handed out to approximately 15 individuals who were involved in a meeting regarding the Dual Diagnosis program. Webster did not speak with Dr. Webb or show him the letter before she passed it out to the other staff. Patient R. C. was finally admitted to Unit 3 at 4:50 p.m., approximately two and one-half hours after he had arrived.

Webster was given notice of contemplated dismissal and an opportunity to respond. She did respond and was subsequently dismissed by DHW. Webster filed a grievance which was heard by an impartial review panel. DHW Director Linda Caballero disagreed with the impartial review panel and on October 3, 1996 issued a decision upholding the termination (Director's Decision, attached to Notice of Appeal). Webster appealed Caballero's decision to the Idaho Personnel Commission and the matter was assigned to Jean R. Uranga, Hearing Officer. Following a three day hearing, the Hearing Officer upheld Webster's dismissal, and the matter is now before the full Commission on petition for review.

## **II.**

### **ISSUES**

We address the following issues on appeal:

- A. Whether the Hearing Officer erred in determining that Webster was insubordinate or refused to perform duties as ordered;
- B. Whether the Hearing Officer erred in upholding dismissal as an appropriate disciplinary action under the facts of this case;
- C. Whether the Hearing Officer erred in failing to admit evidence of the outcome of a related unemployment compensation case.

### III.

#### **STANDARD AND SCOPE OF REVIEW**

The standard and scope of review on disciplinary appeals to the IPC is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. In cases involving Rule 190 discipline, the state must prove its case by a preponderance of the evidence. IDAPA 28.01.01.201.06. That is, the burden of proof is on the state to show that at least one of the proper cause reasons for dismissal, as listed in I.C. § 67-5309(n) and IDAPA 28.01.01.190.01, exist by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

*Soong v. Idaho Dep't of Health and Welfare*, IPC No. 94-03 (February 21, 1996), *aff'd* Case No.

CV 96-00106 (Dist. Ct. 2nd Dec. 6, 1996) (footnote omitted).

### IV.

#### **PRELIMINARY MATTERS**

Webster filed a pre-hearing motion with the Commission seeking to provide additional testimony at the Commission hearing, or in the alternative, to reopen the hearing before the Hearing Officer to provide additional testimony. Webster seeks to admit evidence that Dr. Jon Webb and Michael Cloke, formerly supervisors at State Hospital North, have left the institution since the hearing in this matter. Webster urges that this is relevant because she would no longer be required to work with these supervisors were she to return to her former position. We deny Webster's motion.

There is a long line of judicial authority which holds that the Commission is precluded from taking further evidence on petition for review. *Fridenstine v. Idaho Dep't of Admin.*, IPC No. 95-12 (Aug. 23, 1996), citing IDAPA 28.01.01.202; *Leone v. Idaho Dep't of Correction*, IPC No. 95-06 (June 25, 1996), citing *Sarbacher v. Lewis-Clark State College*, IPC No. 95-03 (Sept. 15, 1995); *Bowen v. Idaho Dep't of Fish and Game*, IPC No. 94-21, p. 3, n. 2, (Decision and Order on Remand, Feb. 27, 1996), citing *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (Dec. 15, 1995), *Department of Health and Welfare v. Sandoval*, 113 Idaho 186, 188 n. 2, 742 P.2d 992, 994 n. 2 (Ct. App. 1987), I.C. §§ 67-5316, 67-5317.

It would be equally inappropriate to reopen the hearing before the Hearing Officer for the admission of this evidence. Webster was dismissed in the summer of 1996 for reasons that existed at that time. The Hearing Officer recognized this in her finding that Webster's conduct amounted to defiance of supervisory authority in general. Evidence that some supervisors who were involved in the July 16 events are no longer with State Hospital North does not alter the Hearing Officer's findings regarding Webster's disregard for authority.

We deny Webster's motion to reopen the hearing before the Hearing Officer to provide additional testimony to the Commission.

V.

**ANALYSIS**

**A. The Hearing Officer's Determination That Webster Was Insubordinate Or Refused To Perform Duties As Ordered Is Supported By Substantial Evidence.**

Webster argues that the evidence produced at the hearing on this matter was insufficient to support dismissal on either of the grounds set forth in the initial Notice of Contemplated Dismissal (Exhibit 144). While it is clear that Webster disagrees with the Hearing Officer's decision, she has failed to identify any errors of fact which would support a decision to overturn the Hearing Officer's determination. Webster does not dispute that all of the findings are based on testimony, she merely challenges the credibility of the testimony on which the Hearing Officer bases her findings.

**1. Credibility Issues.**

We recognize that with respect to the credibility of testimony, the Hearing Officer has an advantage over the Commission. The Hearing Officer has the opportunity to observe the demeanor of witnesses. Where, as here, the issue of credibility is critical, we rely on the determinations made by the Hearing Officer. *See, Starr v. Idaho Transp. Dept.*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990), *Department of Health and Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992, (Ct. App. 1987). A close examination of the record in this matter shows that Webster's account of the afternoon of July 16, 1996 is not substantially at odds with the accounts provided by DHW witnesses. The minor variances can best be described as a difference of characterization than difference of substance. On such a record we will not override the Hearing Officer's determinations as to the credibility of testimony presented at the hearing.

**2. Webster's Justification for Refusal to Admit Patient (Policy 2.5) Is Inapplicable.**

As justification for her refusal to admit Patient R.S. to Unit 3, Webster relies on an internal hospital policy, Policy 2.5 (Exhibit 1). Policy 2.5 specifies that emergency admissions must not require acute detoxification. It is undisputed that Patient R. S. was approved for admission to State Hospital North on June 16, 1996 (Exhibit 3). Because R. S. was not admitted on an emergency basis, Policy 2.5 governing emergency admission of intoxicated patients was inapplicable.

In summary, there is substantial evidence in the transcript and record that Webster was insubordinate and refused to carry out a reasonable order from a supervisor. Dr. Webb was consulted three times regarding his order to admit patient R. S., interrupting several meetings and taking staff away from other duties because of this dispute. Despite the repeated orders to do so, Webster refused to begin the admission process until approximately 4:30, over two hours after the patient and his parents had arrived. The record is also clear that the appropriate way for a nurse to handle questions or concerns about an order is to bring those concerns directly to the attention of the doctor who then makes the final decision as to how those concerns are handled. Rather than take her concerns to Dr. Webb, Webster involved the unit staff in the dispute and drafted a letter of protest which she widely distributed to management and staff but did not discuss with Dr. Webb.

**B. The Hearing Officer Properly Upheld Dismissal As An Appropriate Disciplinary Action Under The Facts Of This Case.**

Webster argues that even if grounds for discipline exist, dismissal was inappropriate and excessive under the facts of her case. As specified by statute (Idaho Code § 67-5309(n)) and rule (IDAPA 28.01.01.190.01), any of the listed causes can justify dismissal. In this, as in any other disciplinary matter, DHW had a choice as to the type of discipline it wished to impose and it

chose dismissal. So long as there is substantial evidence supporting the Hearing Officer's determination that DHW proved, by a preponderance of the evidence that it had "proper cause" to impose discipline, this Commission will not second guess the Department's choice of discipline.

**C. The Hearing Officer's Failure To Admit Evidence Of The Outcome Of A Related Unemployment Compensation Case Was Proper.**

Webster argues that it was error for the Hearing Officer to deny the admission into evidence of a decision in a related unemployment compensation matter. The Hearing Officer properly excluded evidence of the decision in Webster's related unemployment case.

First, the proffered evidence is not relevant to this proceeding. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." I. R. E. 401. The decision in the unemployment case sheds no light on any fact at issue in this appeal. The two administrative proceedings arise out of different statutory provisions, have different purposes, may not have involved the same evidence, and utilize different standards of proof in reaching a determination. Because of these differences, the outcome of one such proceeding has no relevance to the other. Further, these differences are recognized in the statutory scheme governing unemployment compensation. Idaho Code § 72-1368(k)(2) specifically provides that decisions in unemployment compensation matters are not "preclusive" in any other hearing. For these reasons, we hold that the Hearing Officer properly excluded the decision reached in Webster's related unemployment compensation case.

**VI.**

**CONCLUSION**



For the reasons stated above, we DENY Webster's motion to add to the record or to reopen the proceedings before the Hearing Officer, and AFFIRM the decision of the Hearing Officer.

IT IS SO ORDERED.

DATED this 14th day of November, 1997.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

/s/ \_\_\_\_\_  
Sherry Dyer, Acting Chair

/s/ \_\_\_\_\_  
Peter Boyd

/s/ \_\_\_\_\_  
Ken Wieneke

/s/ \_\_\_\_\_  
Don Miller

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing DECISION AND ORDER ON PETITION FOR REVIEW in *Webster v. Idaho Department of Health and Welfare*, IPC No. 96-14, was delivered to the following parties by the method stated below on the 14th day of November, 1997.

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/s/ \_\_\_\_\_  
Val Rodriguez